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Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 1999 TERM

MICHAEL JOHN TAYLOR
Petitioner (pro se)
v.
FEDERAL AVIATION ADMINISTRATION
&
NATIONAL TRANSPORTATION SAFETY BOARD
Respondent

On Petition for Writ of Certiorari to the Supreme Court of the United States from the United States Court of Appeals for the Ninth Circuit.

Petition for Writ of Certiorari

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

PETITION FOR A WRIT OF CERTIORARI

QUESTIONS PRESENTED FOR REVIEW

Question One: Were the Petitioner's Fifth Amendment rights violated by the actions of the Federal Aviation Administration and National Transportation Safety Board?

Question Two: Was the action by the Federal Aviation Administration in compliance with Federal Law, Regulation, Policy and Procedures?

Question Three: Is the doctrine of sovereign immunity for the employees of the Federal Aviation Administration constitutional and does it release federal employees from civil liability?

LIST OF PARTIES UNDER REVIEW.

Michael John Taylor

Federal Aviation Administration

National Transportation Safety Board

United States Court of Appeals for the Ninth District

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OFFICIAL AND UNOFFICIAL OPINIONS AND ORDERS BY THE COURT AND ADMINISTRATIVE AGENCIES.

* March 21, 1995: FAA letter of Investigation sent to Mr. Taylor regarding an aircraft accident. The date of the accident was stated as February 11, 1994. The FAA letter was sent by FAA Inspector George DeMartini. Actual date was February 11, 1995.

*April 27, 1995: FAA Letter to Mr. Batey (Ex-Navy Pilot), the pilot of the aircraft involved in accident. This letter also stated date as February 11, 1994.

*November 9, 1995: FAA letter to Mr. Taylor stating FAA files indicate Mr. Taylor may not have received Notice of Proposed Certificate Action allegedly sent on August 2, 1995, suspending Mr. Taylor's Flight Instructor Authorization for ninety days.(appendix item)

*RE: NPCA Notice of Proposed Certificate Action. (appendix item) is copy of FAA document used to track official notifications. This notification indicates the address as 16607 Telegraph St. Thus explaining why it was not received by Mr. Taylor at 6607 Telegraph St. before the stale complaint limitation occurred (NTSB 821.33).

*January 10, 1996: Letter from FAA to Mr. Taylor Suspending Flight Instructor Authorization with the clause "AND ANY OTHER AIRMEN CERTIFICATE HELD BY AIRMEN" added by FAA Attorney Tsuda.(appendix B item).

*April 25, 1996: National Transportation Safety Board Hearing in Yuma, Arizona, before Administrative Judge Patrick Geraghty. Summary of testimony explained in appeal to NTSB. The Administrative Law Judge determined Mr. Taylor and Mr. Batey (ex-navy pilot) lacked credibility and ruled in favor of the FAA. (Mr. Garland Bell, esq. counsel)

*December 23, 1996: National Transportation Board Order No. EA-4509 affirms ALJ decision. Mr. Taylor previously requested Mr. John Goglia, a member of the NTSB Board, to disqualify and or excuse himself from a decision on the Appeal to the NTSB because

the NTSB member was a party to a law suit against Mr. Taylor in regards to Mr. Taylor's employment as a pilot for Eastern Airlines and the NTSB member being an officer in the Machinist's Union (IAM) and its strike against Eastern Airlines. The specific lawsuit is directed at Mr. Taylor and the pilots that worked at Eastern Airlines. The request was denied and Mr. Goglia refused to excuse himself from deciding this case.

*June 13, 1997: After permission from the court, a Petition for Review was filed in the Ninth Circuit Court of Appeals by Mr. Thomas Peppler, esq (Mr. Taylor's counsel of record). Initial decision of court affirmed FAA and NTSB.

*June 6, 1998: After court permission, Mr. Taylor filed a Petition for Rehearing. The delay was caused by a delay in the court deciding and notifying Mr. Taylor of the initial decision.

*March 1, 1999: The FAA and Ninth Circuit Court determined that a suspension of all on Mr. Taylor's certificates was inappropriate and restricted the suspension to only Mr. Taylor's Flight Instructor authorization thus invalidating the suspension of Mr. Taylor's Airline Transport Certificate, Flight Engineer Certificate, Airframe and Powerplant Mechanics Certificate as well as Private and Commercial Pilot Certificates.

*May, 21, 1999: Petition for a Writ of Certiorari filed with the Supreme Court of the United States.

JURISDICTION

The Supreme Court of the United States has jurisdiction for review from decisions of The United States Court of Appeals For The Ninth Circuit. A decision to deny Mr. Taylor's Petition for Rehearing was filed on March 1, 1999. In compliance with rule 13 a petition for writ of certiorari seeking review of a judgment of a lower court is timely if filed with the Clerk within 90 days after entry of order denying discretionary review. On March 1, 1999, Mr. Taylor's petition for rehearing was denied by the Ninth Circuit Court of Appeals.

Copies of the initial writ were returned to Mr. Taylor for corrections with an extension until August 1, 1999 to return to the court. Mr. Taylor appreciates the courts consideration in this matter and would like to thank the court for the opportunity to present his case. Ethics, Morality and Justice will be furthered served by the presentation of this case identifying the abuses, vindictiveness, inconsistencies, misrepresentation, withholding of evidence, and disregard to FAA policy and orders by FAA individuals and biased NTSB decision makers..

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS.

The laws and regulations involved in this case are briefly identified as per Rule 14. f.
*United States Constitution: (5th Amendment).

*Federal Aviation Regulations: FAR 61.41, FAR 61.93, FAR 61.107 (1995). FAA Order 2150 3.A
*National Transportation Safety Board Rules: NTSB 821- Rules of Practice in Air Safety Proceedings.
*Federal Tort Claim Act and Equal Access to Justice Act.

STATEMENT OF CASE

Approximately 4 years ago a former Navy Pilot requested Mr.Taylor's assistance as a Certified Flight Instructor in helping him obtain his private pilot certificate. He had not applied to the FAA before leaving the Navy . Mr. Taylor contacted the Scottsdale FAA for guidance and was told that because of this pilot's prior military experience, FAR 61.41 applied and this pilot need only pass a written exam and an FAA checkride (all of his military training would apply to requirements for private license). The date of phone conversation is documented by Mr. Taylor's US West phone bill.

FAR 61.41 "Flight instruction received from US Armed Force .... applies to FAA requirements".

Error on the side of caution is the best policy. Therefore, Mr. Taylor requested this pilot attend a 5 week private ground school and take the FAA private pilot written exam. He passed with a 95%. Mr. Taylor supervised 6 hours of flight training, including all aspects of cross-country training, before endorsing him to go on a solo cross-country flight. He was instructed to follow all appropriate FARs and refuel at

the destination. His family had owned this aircraft for 10 years and he was very familiar with it.

Contrary to CFI's instruction the pilot elected to return without refueling after inspecting fuel tanks. He ran out of fuel 18 miles short of the airport and made an emergency landing damaging the aircraft sustaining minor injuries. The appropriate FAA and NTSB notifications were made.

FAA inspector George DeMartini investigating stated he was going to violate Mr.Taylor, the CFI. When questioned as to why, this inspector stated he did not care what happened. Mr. Taylor would be violated and thus be eliminated from a 121 (Airline) cockpit again. FAA Mr. DeMartini was questioned as to what FAR. After some time he responded by stating FAR 61.107.a.7 (2hour cross-country requirement 1995).

Mr. Taylor contacted legal counsel who stated this was not a violation. Some nine months after the incident, 3 months past NTSB Rule 821.33 statute of limitation, Mr. Taylor received a Notice of Proposed Certificate Action suspending Mr. Taylor's Flight Instructor Certificate for a violation of FAR 61.93 c 1 i (failure to document map reading and navigation for this pilot in his logbook). Mr. Taylor's entry in this pilot's logbook stated "NAV" training. At the NTSB hearing both the pilot and Mr. Taylor explained this training was accomplished. However, in the opinion of this inspector "NAV" is not sufficient to describe map reading and navigation. Incidentally, the former 1000+ hour Former-Navy Pilot was currently the Senior Safety Analyst for the Navy (civilian) training the Navy and Marine Pilots in simulators at MCAS YUM and was the author of various training

manuals for the Navy including INS, GPS, TACAN. DR(dead reckoning) and pilotage. He was one of the top experts in the field. Also, in this process Mr. Taylor was accused of causing this accident by FAA Attorney Tsuda at the NTSB Hearing. Mr. Taylor's attempt to get the NTSB's accident report detailing the accident before the NTSB and the court was blocked by the FAA and not allowed into the record. The NTSB report clearly states the probable cause as pilot's failure to refuel his aircraft (contrary to instructions from Mr. Taylor). Also blocked from the record are eyewitness statements regarding some of the training in question (three separate eyewitness accounts).

Another item of evidence involves a Freedom of Information Act Request regarding documentation of Mr. Taylor's training record referred to at the NTSB hearing by FAA Attorney Noami Tsuda and in her possession at the NTSB hearing. When Mr. Taylor requested this information under the Freedom of Information Act, FAA Tsuda's response to the FOIA request was "none known". The NTSB hearing record clearly shows otherwise (page 92, line 16-22). This document supplements the training record and specifically spells out the training. It was a copy of an Aircraft Owners and Pilots Association BFR checklist designed to cover many items including the training in question.

After four years of trying to clear my reputation and salvage my aviation career the Ninth Circuit requested the FAA respond to their conduct. In the FAA response the FAA admits to errors the FAA describes as harmless. The FAA amended its order suspending

only one of Mr. Taylor's certificates rather than all six. The FAA also corrected FAA Inspector DeMartini's testimony in regard to FAR 61.41. Inspector DeMartini's NTSB testimony discounted FAR 61.41 yet in recent FAA filings this position was corrected and the FAA stated military flight training may be credited toward the requirements of a pilot certificate. However, the FAA still insists on a suspension of Mr. Taylor's flight instructor authorization. Also the FAA record for Mr. Taylor has reflected an enforcement action involving a suspension of ALL of his certificates for over 4 years. These record should have reflected no such violation or enforcement action since there has been a stay from the very beginning. The Pilot Record Improvement Act (PRIA) and Freedom of Information Act (FOIA) reflect a suspension of ALL certificates despite the fact there was a stay. Employment as an airline pilot, Mr. Taylor's former career, is predicated on these records. In fact airlines are required by law to access these records. So in fact a suspension of all of Mr. Taylor's certificates as reflected by the FAA record has precluded Mr. Taylor from exercising his certificates and property as guaranteed by the constitution. FAA DeMartini has done exactly what he stated.

This is a David versus Goliath situation. The FAA employees responsible for this action have manufactured a record to support a suspension of Mr. Taylor's FAA certificates. The Administrative Law process has determined that Mr. Taylor and the Navy Pilot lacked credibility. This process is required to be a fact finding process. It has fallen horribly short.

The Administrative Law Judge and the NTSB have relied on clearly misrepresented information presented by FAA DeMartini and Tsuda.

Experts throughout this country including many within the FAA have pointed out the short comings and abuses this government agency can perpetrate against citizens. All have suggested I accept the fact that it cannot be addressed despite the unfairness. It is unfair and a violation constitutional guarantees. The founding fathers have formulated a constitution and body of laws to ensure domestic security while preserving individual rights. This FAA action is clearly a violation of the intent, spirit and actual letter of the law. The laws of this country should apply both to its citizen and federal agencies.

DIRECT AND CONCISE ARGUMENT

Many of the issues involved in the prosecution of Mr. Taylor are unethical, abusive, vindictive, and contrary to government policy and procedures. As much as Mr. Taylor would like these issues reviewed and considered, he realizes the scope of a review for the Honorable Supreme Court must be clear, concise, related to the U. S. Constitution and having serious impact on citizen rights so as to affect society as a whole.

Question #1: The simple fact that government bureaucracy can destroy the professional life and restricts the right of a single individual to exercise his 5th Amendment Right to life, liberty, and property

without due process of law is the core of this question.

There is no question that FAA airmen certificates are tangible property and protected by the 5th Amendment.

*Pastrana v. United States 746 F. 2d 1447 (1984)."Pastrana's pilot certificate.....was a cognizable property interest protected by the procedural due process requirement of the 5th Amendment."

Mr. Taylor alleges his due process rights were abridge and restricted due to the following issues:

1. The ALJ clearly relied on false and misrepresented testimony by FAA Inspector DeMartini. Besides the false and misleading testimony by FAA DeMartini his explanation of FAR 61.41 was clearly incorrect and just recently corrected by recent FAA filing to Ninth Circuit Court. (military flight instruction can credit for pilot requirements)

2. FAA Attorney Tsuda's withholding of evidence (information presented to Jackie Clow of the FAA several months prior to NTSB hearing as well as a document from FAA Simon Wheaton-Smith from the Scottsdale Flight Standards District Office to FAA Tsuda indicating Mr. Taylor had committed no violation.)

3. FAA Attorney accusing Mr. Taylor of causing an accident during the NTSB hearing and the FAA's

successful attempt to prevent the official NTSB report from being entered into the record as well as three eyewitness accounts of some of the training in question.

4. The ALJ relied heavily of this information. In fact the ALJ even goes so far as assuming a conversation between the Former-Navy pilot and the FAA must have contained information for the FAA to base their case. This is simply another issue that has absolutely no basis. There was no testimony regarding the content of Mr. Batey's telephone call indicating that the training in question did or did not occur. There was only a statement indicating a conversation had occurred. Both Mr. Taylor and Mr. Batey, the former navy pilot, never discussed the regulation in question with this inspector. This regulation was only mentioned nine months after the accident in the delayed suspension notice to Mr. Taylor. The ALJ decision was tainted by incorrect information and his opinion regarding indicated telephone conversation is based on assumptions with no basis. Also Mr. Taylor's attorney was prevented from questioning FAA DeMartini in regards to his misrepresentation of FAR 61.41 (application of military flight instruction)

5. Upon appeal to the NTSB Board Mr. Taylor requested a Board member to disqualify himself from ruling on the case. This Board member is a party to a law suit against Mr. Taylor and thus could have tainted the decision making process of the NTSB Board. The constitution expressly forbids juries and decision makers to have any personal interest in the

results of a case. Mr. Goglia's interest in the law suit against Mr. Taylor clearly indicates he has a personal interest.

6.The very verbiage of the FAA accusations received in November of 1995 indicate that Mr. Taylor is guilty no matter what he had done.
"You violated the FAA regulations ...":
a) "...in that you endorsed a student pilot certificate for solo cross country....when you had not given that pilot required flight instruction..." (map reading and navigation)

and

b) " you did not sign the logbook of a person to whom you had given flight instruction and
specify in that book ..."(map reading and navigation)

This is akin to the Salem witch trials of the 1600's. Throw the witch in the water. If she drowns she is not a witch. Mr. Taylor cannot be guilty of both of these violations. Mr. Taylor cannot both give instruction and not document it and document it and not give it.

7. The ALJ ruled believing that FAR 61.41 (military training may credit for pilot requirements) did not apply according to FAA DeMartini's testimony. In the last filing with the Ninth Circuit the FAA corrected FAA DeMartini and stated this training does apply. Not only should this result in a change in the FAA's position but the following citation supports the requirement that the interpretation of FAR's be supported by practice.

" While deference to the FAA Administrator's validly adopted interpretations of FARs is required by law it cannot be readily accorded in the context of a hastily-developed record that is sustained solely by argument of counsel. This is particularly so where interpretation advanced is unsupported by citation of practice, precedent, or explicit documentation...."
(Administrator v. Krachun, Order EA-4002 pages 5-6).

Mr. Taylor has requested from the FAA on several occasion for reasons FAR 61.41 was discounted. No citation or explanation was ever given. Yet in recent filings the FAA says military flight instruction may be credited.

Question #2: For this violation of FAR 61.93 c1 i (map reading and navigation) to occur all of the following have occurred.

1.The testimony of Mr. Taylor and the former-navy pilot must be discredited as well as the pilot's logbook and supporting documentation.

2.NTSB Rule 821.33: Stale complaint rule requiring FAA to notify Mr. Taylor before a 6 month limitation occurred in August of 1995 was delivered to Mr. Taylor in November of 1995. This rule was discounted.

3. FAR 61.41:"Military flight instruction can be credited toward the requirements of a pilot certificate", was discounted.

4. FAR 61.93 Pilot performance as judged by Flight Instructor. This part of FAR 61.93 was discounted. It seems that FAA inspector is best judge despite the fact he was 200 miles away when the training occurred. Mr. Taylor was in the back seat of the aircraft yet deference was given to FAA.
5. FAA Compliance and Enforcement Manual FAA Order 2150.3A clearly details the action of FAA inspectors. Inspector DeMartini violates this FAA order numerous times. This order is discounted.

Clearly these Federal Rules, Regulations, and Orders have been exempted from applying to Mr. Taylor and this FAA prosecution. The very nature of this prosecution has been vindictive and to date no recommendation has been made regarding training and safety.

Question #3: Mr. Taylor's life and career have dramatically been affected by this irresponsible FAA prosecution. He is not part of a large corporation, represented by political interests or ethnically disadvantaged. He is simply a somewhat average American attempting to contribute to American Society. His aviation career and reputation has been destroyed by abusive and vindictive government employees misusing the Administrative Law Process.

The Chief Counsel of the FAA recently sent Mr. Taylor a letter stating if there is any merit to the allegations against FAA DeMartini and Tsuda, Mr. Taylor must pursue a remedy in Federal District Court. Mr. Taylor has filed a suit in the U.S. District Court for the District of Arizona in regards to the conduct of these government employees and

agencies. The FAA individuals , FAA, and NTSB have been dismissed from this case at the request of the U.S. Attorney. A claim under the Federal Tort Claims Act has also been filed with the FAA and subsequently denied.

The FAA has held hostage ALL of Mr. Taylor's Certificates for over 4 years. Partial relief came on March 1, 1999, when the Ninth Circuit ruled that it was incorrect for the FAA to suspend ALL of Mr. Taylor's Certificates. Mr. Taylor has requested the Honorable Judge Broomfield of the Arizona Court to award the FTCA claim to Mr. Taylor and reinstate defendants DeMartini , Tsuda, FAA, and NTSB. To date no decision by Judge Broomfield has been made.

Clearly there has been an incorrect suspension of Mr. Taylor's certificates. Mr. Taylor's FAA record has also reflected an enforcement action regarding all certificates for over 4 years.

Clearly the FAA has misapplied regulations and suspended all of Mr. Taylor's certificates without justification.

Mr. Taylor's desire to get relief from the District Court for the District of Arizona has not concluded. However, unless Judge Broomfield reconsiders his decision FAA DeMartini and Tsuda will be dismissed from the case and will not be held accountable for any of their vindictive actions and misconduct.

This aspect of government protection is beyond the scope of the intent of the Federal Tort Claims Act. The Executive Branch of the U.S. government has engaged in redefining simple language to meet the desire of specific individuals and have engaged in changing not only the spirit of the law but the actual letter of the law. When an FAA Inspector can simply

say FAR 61.41 doesn't mean what it says at a federal hearing , the ALJ agrees, then the FAA responds 3 years later correcting the inspectors testimony but continue to push for a suspension is unbelievable. Yet even worst is the ability of a federal agency to avoid any accountably.

Conclusion of Arguments

What importance does this case have on the Constitution and American citizens as a whole? First, the ability of this court to judge testimony and facts of the case is difficult and probably beyond the ability of the court to consider. Although any consideration is welcomed.

The issues related directly to the questions are, was there a focus on fact finding required by administrative law, was Mr. Taylor's due process right violated by a prejudiced and tainted administrative process, and does the FAA have authority to interpret FAA rules without a citation of practice, precedent, or explicit documentation?

This case is based on one FAA inspector's incorrect interpretation and a manufactured record to support this violation that sorely lacks the degree of fact finding required by administrative law. Results of this decision will either support the federal government in conducting its affairs in the manner characterized by this case or require the federal government to be accountable. Mr. Taylor requests the court to bring some sense of dignity and justice to this case by requiring the FAA to follow the duly enacted laws of the land. Mr. Taylor has asked nothing more than to be given the rights granted to all citizens.

Remanding this case to rehearing would also send a message to all concerned. A decision of this nature by the court will send a resounding message throughout this great country that ALL must be accountable and should accountability be lacking the courts will require further review rather than allow individual rights to be unfairly restricted and Constitutional rights violated.

Corrections to Writ

Thank you for the opportunity to present this case to the Honorable Justices of the Supreme Court. For four years I have relived this nightmare thousands of times. My position as a public school principal demands a great deal of time and effort. Most of the work on this has occurred late nights and well into the morning hours. I have pursued this course because I face young people everyday and truly believe that doing the right thing is critical for our society to flourish. I refuse to release these young people to a society or process that promotes government abuse and unaccountability without standing up for the principles that are guaranteed by our constitution.

Respectfully submitted,

Michael John Taylor

Michael John Taylor
July 26, 1999

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APPENDIX 1
(REFORMATTED)

FILED
Mar 01, 1999
Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHAEL JOHN TAYLOR, Petitioner,
v.
LINDA HALL DASCHLE, Acting Administrator,
FEDERAL AVIATION ADMINISTRATION,
Respondents.

No. 97-70175
FAA-SE-14370
ORDER AMENDING MEMORANDUM DISPOSITION
AND DENYING REHEARING*

Before: WOOD, JR.,** HALL and O'SCANNLAIN, Circuit Judges

On April 27, 1998, the Memorandum Opinion was issued affirming the Administrator's Order suspending for sixty days Petitioner's flight instruction authorization and all other airman certificates that he holds. Thereafter, on

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*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by the Ninth Circuit Rule 36-3.

**The Honorable Harlington Wood, Jr., United States Circuit Judge for the Seventh Circuit, sitting by designation

August 24, 1998, Petitioner filed a pro se petition for rehearing, arguing among other things that the sixty-day suspension should be imposed only against his flight instruction authorization and not against his other airmen certificates. The court directed Respondents to file an answer to the petition for rehearing. In that answer, the FAA conceded that Petitioner's argument as to the breadth of the suspension "may have some merit" and asked the court to amend the memorandum disposition to impose the sixty-day suspension only against Petitioner's flight instruction privileges. We note that the FAA Order of Suspension issued on January 10, 1996 was inconsistent in that the findings were broad and included suspension of all of Petitioner's airmen certificates, but the order provided suspension only of Petitioner's flight instruction authorization. The issue was not raised by Petitioner in his appeal, but we agree with the FAA and the Petitioner, now that it has been raised, that the broad suspension was unfair.

Therefore, the memorandum disposition filed April 27, 1998 is amended. The sixty-day suspension will be imposed only against Taylor's flight instruction authorization, not as to any other airmen certificates he may hold. The National Transportation Safety Board's order is affirmed in all other respect.

The petition for rehearing is denied.

APPENDIX 2
(REFORMATTED)

SERVED: DECEMBER 23, 1996
NTSB Order No. EA-4509

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD at its offices in Washington, D.C. on the 11th day of December, 1996

LINDA HALL DASCHLE, Acting Administrator, Federal Aviation Administration, Complainant,
v.
Michael John Taylor, Respondent

Docket SE-14370

OPINION AND ORDER

Respondent, who is not represented by counsel,[1] has appealed from the oral initial decision and order of Administrative Law Judge Patrick G. Geraghty, rendered in this proceeding at the conclusion of an evidentiary hearing

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[1]Respondent was represented by counsel at the hearing.

held on April 25, 1996.[2] By that decision, the law judge affirmed the Administrator's order, suspending respondent's commercial pilot and flight instructor certificate for 60 days, on allegations that he violated section 61.195(c) of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 61, by failing to give required flight instruction before endorsing one of his students' pilot certificate for solo cross-country flight privileges.[3]

The facts giving rise to this complaint were discovered during the course of an investigation into the crash of aircraft N2150A, that occurred on February 11, 1995. One of the respondent's students was operating the controls of N2150A, performing his solo cross-country flight, at the time of the incident. An FAA investigator subsequently examined the student pilot's logbook, and the entries did not support respondent's endorsement for solo cross-country flight privileges because the student appeared to have not received all of the flight instruction required by FAR 61.93(c) (1) (i).

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[2]An excerpt from the hearing transcript containing the initial decision is attached.

[3]FAR 61.195 (c) provided at the time of the allegations in pertinent part as follows:

> FAR 61.195 Flight instructor limitations.
>
> The holder of a flight instructor certificate is subject to the following limitations...
>
> (c) Endorsement of student pilot certificate. He may not endorse a student pilot certificate for initial solo or solo cross-country flight privileges, unless he has given that student pilot flight instruction required by this part for the endorsement...

A letter of investigation was sent to respondent. *(Insert 1 by MT - FAA DeMartini accused Mr. Taylor of not going on a two hour cross-country. FAR 61.107 states this is not a requirement. No mention or request was made of Mr. Taylor concerning FAR 61.93 (c) (1) (i). Mr. DeMartini stated he would violate Mr. Taylor regardless.)* Respondent produced a document that purported to show that the necessary training took place on February 10, 1995. The student's logbook did not document any flight training for that date, and, according to the investigator, respondent admitted to him that he only gave the student ground instruction on that date. This enforcement action followed. *(Insert 2 by MT - The February 10, 1995 document was a checklist used to verify that all training had indeed been completed and fulfilled other requirements required for cross-country flights such as weather, flight planning, etc. Mr. Taylor and Mr. Batey did not indicate in any way that flight training took place on that day, only the requirements necessary as explained above. The flight training in question took place on February 3, 1995, as indicated by "NAV" written in Pilot logbook. This sort of contortion and manipulation is responsible for this case going so far through the system. It is understandable why pilots shy away from the FAA when a system is so bent on destroying people and reputations. I can't help but believe that many pilots avoid the assistance and help from the FAA simply to avoid the hassle of dealing with the FAA. The tragic occurrence of the recent weeks with the death of John F. Kennedy, Jr. if seriously investigated would show that John F. Kennedy, Jr. simply did not want to deal with the FAA in his flight along the East Coast. Substantial support is available but pilots elect not to file flight plans and use radar service because any indiscretion may result in a heavy-handed approach from irresponsible and vindictive personnel.*

Please review Pilot Logbook attached to this order. The last dual instruction flight is logged on February 3, 1995. The February 11, 1995, logbook entry is a cross-country solo flight which has "NAV" written Yuma to Eloy. Mr. Batey's accident occurred on return leg. The NTSB stating that Flight instruction was logged and not given is clearly false. This February 11, 1995, flight was not a dual flight. Additional paperwork and checklists do assure compliance was completed on February 10, 1995, and February 11, 1995.

Note the bottom page of the logbook is solo flight by Mr. Batey.

The NTSB says the "NAV" written on February 11, 1995, cannot be possible because no dual instruction flight occurred. There was no dual instruction of "NAV" on February 11, 1995. However, if you review the logbook entry of February 3, 1995, you will also see the "NAV" written. This is the "NAV" that was required by FAR 61.93 (c) (1) (i).)

Respondent makes numerous arguments in his appeal brief, all of which we view as raising, essentially, two issues for our consideration.[4] First, he contends, the law judge should have dismissed the allegations under the Board's stale

---

[4]Respondent also filed a motion to disqualify any Board Member, who has ever been associated with either the Airline Pilots' Association or the International Association of Machinists and Aerospace Workers, claiming such a Member might be biased against him since, apparently, respondent is a former Eastern Airlines pilot. The motion is denied. A claim of potential bias does not warrant a disqualification.

complaint rule.[5] Secondly, respondent argues, the Administrator failed to meet his burden of proof. The Administrator has filed a brief in reply, urging the Board to affirm the law judge's decision.[6] For the reasons that follow, we deny respondent's appeal.

The Stale Complaint Issue:

According to the record, the Administrator mailed a Notice of Proposed Certificate Action (NOPCA) to respondent via certified mail, on or about August 2, 1995, 9 days before the 6-month period expired under the stale complaint rule. The NOPCA was prepared and typed in the legal office and then placed in an internal FAA mail system so that it would be mailed from the agency mail room. An internal tracking form was prepared by a member of the legal office staff, by hand. On that form, respondents's address could be misread as "16607 Telegraph Street," because of the clerk's handwriting. The correct address is 6607 Telegraph Street.

Respondent testified that he never received the NOPCA. Documents produced by the Administrator indicate that it was placed in the mail by the FAA mail room on August 3, 1995, and that a return receipt was never logged in to show if the mail had been received. The envelope was

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[5]Under the Board's stale complaint rule, 49 C.F.R. 821.33, a complaint that alleges offenses which occurred more that 6 months prior to the Administrator's advising an airman as to his reasons for proposed certificate action, may be subject to dismissal.

[6]We will not consider respondent's unauthorized response to the Administrator's reply brief. Respondent neither requested specific permission to file it, not established good cause for it's acceptance. 49 C.F.R. 821.48 (e).

also never returned to the FAA. On November 9, 1995, FAA counsel discovered that the receipt had never been returned. She then mailed the NOPCA by regular mail, which the respondent received. (Insert 3 by MT - No document was presented verifying mailing to correct address.)

The law judge ruled that dismissal of the Administrator's order was not required under the stale complaint rule. Respondent contends this ruling is erroneous. Respondent asserts that because his address appears to be incorrect on the FAA internal mail tracking form, we should assume that the correspondence was also incorrectly addressed. We disagree. The actual NOPCA had the correct address typed on the face of the correspondence, as does every other piece of correspondence that appears in the Board's case file. *(Insert 4 by MT - This notice was the first document sent to Mr. Taylor from the FAA in Los Angeles.)* We think it is more likely that the envelope was typed with the correct address.[7]

Respondent also argues that the order should be dismissed as stale, at least with regard to its application against his commercial certificate, as opposed to his flight instructor authorization. Respondent correctly notes that the NOPCA proposed suspending only his flight instructor authorization. When the order was issued, however, the

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[7]Board precedent supports the law judge's finding that good cause existed for the Administrator's delay in re-serving the NOPCA by regular mail. Administrator v. Gelman, 5 NTSB 196 (1985) (Good cause found where NOPCA was mailed almost 1 month before the expiration of the 6-month period and neither the envelope or return receipt were returned.

Administrator ordered suspension of the flight instructor authorization of his commercial certificate and any other airmen certificates he holds. Respondent suggests that because the Administrator may have discovered this omission from the NOPCA during the informal conference, which respondent did not attend, he was prejudiced in his ability to defend against the enforcement action. We reject this argument. Respondent's attorney of record participated in the informal conference by telephone. Therefore, respondent, through counsel, had notice of the change, and counsel was clearly prepared at the hearing to defend the issue. *(Insert 5a by MT - Mr. Bell, Mr. Taylor's lawyer has responded concerning the issue of suspension of all certificates. There was absolutely no mention of this increase during the informal hearing.*
**Mr. Bell's letter is available should the court request additional documentation of false statements by FAA and NTSB lawyers several times removed from the case.)* Since there is no evidence that respondent was prejudiced by the change, we think that any error in the issuance of the order was harmless. *(Insert 5b by MT - The FAA has since reversed this decision.)*

Sufficiency of the Evidence:

Respondent asserts that the Administrator failed to establish by a preponderance of the evidence that he did not give the required flight instruction to his student before he endorsed the student's student pilot certificate for solo cross-country privileges. Respondent claims that the law judge's credibility determination in favor of the Administrator's witness should be reversed. He asserts that the FAA investigator's testimony was fabricated. He also contends that his attorney was prevented from rebutting the Administrator's witness' rebuttal testimony. Finally, respondent argues that

his student was not required to take flight instruction required by FAR 61.93 because he had accrued over 1,000 hours of flying time approximately 20 years ago, when he was a Navy pilot. We reject all of these contentions. *(Insert 6 by MT - The Scottsdale FAA a month prior to this cross-country flight directed Mr. Taylor that FAR 61.41 applied. Subsequently, FAA Inspector Simon Wheaton-Smith of SDL FSDO along with FAA Jackie Clow provided information and documentation that indeed there was no violation.)*

The record reveals that when the student was initially asked to produce evidence of his training, all he produced was his logbook. *(Insert 7 by MT - The initial allegation by FAA DeMartini was that Mr. Taylor had not completed a 2-hour cross-country flight with this pilot. No mention of 61.93 (c) (1) (i) ("NAV") was brought to Mr. Taylor's attention until November 1995, nine months after the accident. At that time additional information was provided to FAA Jackie Clow and subsequently presented to FAA Attorney Tsuda. Tsuda made reference to this information during the NTSB hearing then subsequently denied any knowledge when Mr. Taylor requested the information under a Freedom of Information Act request. Also denied by Tsuda is a document sent to her by FAA Inspector Simon Wheaton-Smith stating there was no violation.)* Only in response to the letter of investigation, did respondent then produce what he claimed was all evidence he had to show the necessary flight training was accomplished. According to the testimony of the investigating FAA inspector, he reviewed this evidence and found that it was inconsistent with the logbook entries, because the logbook did not show that any flying time was logged on the days when the student supposedly took the flight training. When he questioned respondent on the matter,

respondent admitted that he had given the student only ground instruction on certain required maneuvers. *(Insert 8 by MT - This is untrue. The record does not show this. The telephone conversation with Mr. DeMartini focused on a 2-hour cross-country flight. I indicated I had not completed a 2-hour cross-country flight. However, no mention was ever made in regards to FAR 61.93 (c) (1) (i). If the required maneuvers referenced here by the NTSB are concerned with a 2-hour cross-country flight than it is correct. If it is in reference to 61.93 (c) (1) (i), it is false. Mr. DeMartini cleverly stated in testimony regarding his phone call to Mr. Taylor that Mr. Taylor had not done training. The training involved a 2-hour cross-country flight that is NOT an FAA requirement for the cross-country flight involved. At no time during a phone conversation or NTSB hearing did Mr. Taylor state he had not done all of the required training.)* The investigator prepared a memorandum of this conversation. Respondent denies that this conversation ever took place. *(Insert 9 by MT - No record of this was ever presented to NTSB hearing.)*

Prior to the hearing, the respondent produced additional documents, including a flight review checklist. (R-2) Various maneuvers and other areas of instruction are listed therein, and certain items are initialed and dated by both the respondent and his student. Both contend that this documentation disproves the Administrator's allegations.

The law judge rejected respondent's claims, finding they lacked credibility. As we have stated repeatedly, see, e.g., Administrator v. Rivera and Helivan Helicopters, Inc., NTSB Order No. EA-4419 at 5 (1996), and cases cited therein the law judge sees and hears the witnesses, and he is

in the best position to evaluate their credibility. *(Insert 10 by MT - The ALJ restricted testimony involving this case. He ruled that 61.41 does not apply, preventing Mr. Taylor's attorney from questioning FAA DeMartini. DeMartini simply says FAR 61.41 does not mean what it says. The ALJ agrees and restricts Mr. Taylor's attorney from questioning or even presenting the verbiage of the regulation. The NTSB report on this accident was also kept from the record. The ALJ also stated that all certificates should be suspended. Subsequently, the FAA and Ninth Circuit agree the suspension enforced by the ALJ was incorrect. The FAA even goes further by stating in recent filings to the Ninth Circuit that FAR 61.41 does mean what it says and does apply. However, because it was not presented to the Ninth Circuit, Mr. Taylor may not use it in support of his training.)* Absent some compelling reason that persuades us that a law judge's credibility determination is inconsistent with the overwhelming weight of the evidence, we will not disturb his findings.[8] Respondent offers no persuasive reason to disturb the findings of the law judge in this particular proceeding.[9]

---

[8]As to respondent's claim that he was prejudiced by the law judge's refusal to permit surrebuttal, we agree with the Administrator that respondent's counsel was given ample opportunity to cross-examine the witnesses, and that additional testimony would have been superfluous. It was not an abuse of discretion for the law judge to deny the request.

[9]Respondent also challenges the sanction as too harsh, but establishes no reason why we should not defer to the period of suspension the Administrator has sought. In any event, we think the sanction is appropriate for the violations proved.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's initial decision is affirmed; and
3. The 60-day suspension of respondent's commercial certificate, flight instructor certificate, and any other airmen certificate held by respondent, shall begin 30 days after service of this order.[10]

HALL, Chairman, FRANCIS, Vice Chairmen, HAMMERSCHMIDT, GOGLIA, *(Insert 11 by MT - Mr. Goglia is a party to a lawsuit against Mr. Taylor, a former Eastern Pilot. Mr. Goglia is/was an officer in the IAM Machinists Union while it was involved in a labor strike at Eastern Airlines. Mr. Taylor requested that he recuse himself from the case. Request denied.)* and BLACK, Members of the Board, occurred in the above opinion and order.

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[10]For the purpose of this order, respondent must physically surrender his certificates to a representative of the Federal Aviation Administration pursuant to FAR 61.19 (f).

Excerpt from Mr Batey's Logbook.

* Correct + proper endorsements on back pages of logbook!

DATE 1995	AIRCRAFT MAKE & MODEL	AIRCRAFT IDENT.	POINTS OF DEPARTURE & ARRIVAL FROM	TO	REMARKS, PROCEDURES, MANEUVERS	NO. INSTR. APP.	NO. LDG.
3/21	C-150	60742	Yum	LCL	A/C familiarization/checklists/Preflight S+L/climbs/Descents/TO/L/Emergency		3
3/31	C-150	60742	Yum	LCL	Normal TO/L/Soft field/Short field TO/L Emergencies Procedures		8
4/3	C-150	60742	Yum	LCL	Stalls-Liftoff-Approach-Accelerated (9) Spin Awareness/Emergency Landing		2
1/28	VG-21	56180	Yum	LCL	Preflight/checklist/System of TO/L Aiportops		1
1/29	VG-21	56180	Yum	LCL	TO/L Soft field, Emerg. Procedures Cat Collision Avoidance/		7
2/3	VG-21	56180	Yum	LCL	STALLS/AH/steep turns/MCA/CHECKLIST VOR NAV GLET Complete with the above Article Written Completed this date. MED Good thru 2-24-95. SEE BACK of LOG BOOK		4

I certify that the statements made by me on this form are true.

PILOT'S SIGNATURE Kenneth C Batey

PAGE TOTAL

AMT. FORWARD

TOTAL TO DATE

* Navigation training in Question

AIRCRAFT CATEGORY AIRPLANE SEL	AIRPLANE MEL	CROSS COUNTRY	CONDITIONS OF FLIGHT DAY	NIGHT	ACTUAL INSTR.	SIMULATED INSTR.	SYNTHETIC TRAINER	TYPE OF PILOTING TIME DUAL RECEIVED	PILOT IN COMMAND		TOTAL DURATION OF FLIGHT
1 0			1 0					1 0			1 0
1 3			1 3					1 3			1 3
1 0			1 0					1 0			1 0
1 0			1 0					1 0			1 0
1 0			1 0					1 0			1 0
1 5			1 5					1 5			1 5
6 8			6 8					6 8			6 8

DATE 1995	AIRCRAFT MAKE & MODEL	AIRCRAFT IDENT.	POINTS OF DEPARTURE & ARRIVAL FROM	TO	REMARKS, PROCEDURES, MANEUVERS	NO. INSTR. APP.	NO. LDG.
2/4	VG-21	N56180	Yum	LCL	TO/L VOR NAV STALLS MCA Emerg. Procedures		6
2/7	VG-21	N56180	Yum	LCL	TO/L VOR NAV STALL MCA		6
2/11	VG-21	N56180	Yum	ELOY	X/C VOR NAV		1

* 1st Leg of solo X-Country incorrectly returned to by NTSB Order as training in Question.

I certify that the statements made by me on this form are true.

PILOT'S SIGNATURE Kenneth C Batey

PAGE TOTAL 0

AMT. FORWARD

TOTAL TO DATE

AIRCRAFT CATEGORY AIRPLANE SEL	AIRPLANE MEL	CROSS COUNTRY	CONDITIONS OF FLIGHT DAY	NIGHT	ACTUAL INSTR.	SIMULATED INSTR.	SYNTHETIC TRAINER	TYPE OF PILOTING TIME DUAL RECEIVED	PILOT IN COMMAND		TOTAL DURATION OF FLIGHT
1 5			1 5						1 5		1 5
2 0			2 0						2 0		2 0
1 3		1 3	1 3						1 3		1 3
4 8		1 3	4 3						4 8		4 8

BEST AVAILABLE COPY

APPENDIX 3
(REFORMATTED)

FAR 61.41 Flight Instruction received from flight instructors not certificated by the FAA.

Flight instruction may be credited toward requirements for a pilot certificate or rating issued under this part if it is received from -

(a) An Armed Force of either the United States or a foreign contracting State to the Convention on International Civil Aviation in a program for training military pilots; ...

FAR 61.93 Cross-country flight requirements (for student and recreational pilots seeking private pilot certification).

... (c) *Flight training.* A student pilot, in addition to the pre-solo flight training maneuvers and procedures required by FAR 61.87(c), must have received and logged instruction from an authorized flight instructor in the appropriate pilot maneuvers and procedures of this section. Additionally, a student pilot must have demonstrated an acceptable standard of performance, as judged by the authorized flight instructor certificated under this part who endorses the student's pilot certificate in the appropriate pilot maneuvers and procedures of this section.

(1) For all aircraft -

(i) The use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass; ...

821.15 Motion to disqualify a Board Member.

A motion requesting a Board Member to disqualify himself shall be filed with the Board, supported by an affidavit setting forth grounds for disqualification. In nonemergency proceedings, where an appeal from an initial decision is filed, such a motion shall be filed on or before the date on which it reply brief is due, pursuant to 821.48(d). In emergency proceedings, where a notice of appeal has been filed, such motion shall be filed on or before the reply brief is due, pursuant to 821.57(b). Failure to file a timely motion shall be deemed a waiver of any claim of disqualification. Application for leave to file an untimely motion may be made, accompanied by an affidavit, setting forth in detail why the facts relied upon as grounds for disqualification were not know and could not have been discovered with reasonable diligence within the prescribed time.

821.32 Burden of Proof.

In proceedings under section 609 of the Act, burden of proof shall be upon the Administrator.

821.33 Motion to dismiss stale complaint.

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to as to reasons for proposed action under section 609 of the Act, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) in those cases where a complaint does not allege

lack of qualification of the certificate holder:

(1) The Administrator shall be required to show by answer filed within 15 days of service of the motion that good cause existed for the delay, or that the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.

(2) If the Administrator does not establish good cause for the delay or imposition of a sanction notwithstanding the delay, the law judge shall dismiss the stale allegations and proceed to adjudicate only the remaining portion, if any, of the complaint.

(3) If the law judge wishes some clarification as to the Administrator's factual assertions of good cause, he shall obtain this from the Administrator in writing, with due service made upon the respondent, and proceed to an informal determination of the good cause issue without a hearing. A hearing to develop facts as to good cause shall be held only where the respondent raises an issue of fact in respect of the Administrator's good cause issue allegations.

(b) In those cases where the complaint alleges lack of qualification of the certificate holder:

(1) The law judge shall first determine whether an issue of lack of qualification would be presented if any or all of the allegations, stale and timely, are assumed to be true. If not, the law judge shall proceed as in paragraph (a) of this section.

(2) If the law judge deems that an issue of lack of qualification would be presented by any or all of the allegations, if true, he shall proceed to a hearing on the lack of qualification issue only, and he shall so inform the parties. The respondent shall be put on notice that he is to defend against lack of qualification and not merely against a proposed remedial sanction.

APPENDIX 4
(REFORMATTED)

U.S. DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

FLIGHT STANDARDS DISTRICT OFFICE
15041 North Airport Drive
Scottsdale, AZ 85260-2408
602-640-2433

May 8, 1996

Mr. Mike Taylor
6607 Telegraph Street
Yuma, Arizona 85365

Dear Mr. Taylor:

The FAA has for some time been instrumental in recognizing the achievements of individuals who have contributed significantly to aviation safety. The hope and goal of this effort is to ensure that those individuals who have served the flying public have a moment of glory and are honored for their dedication, experience and responsibility.

Mike, you have been nominated to receive the Flight Instructor of the Year Award for Arizona. Congratulations on your achievement as a Flight Instructor and teacher of safe flying principles. Your superior performance is noted by those who nominated you for this prestigious award. We thank you for your contribution to Aviation Safety.

Please join the other nominees at this years Arizona Aviation Safety Awards Banquet held in Phoenix, Arizona, on May 18, 1996. Enclosed is your admission ticket with all the function details. If you wish more tickets for friends and family call 602-640-2433 to reserve the number needed and they can be purchased at the registration table at the Banquet. We must have reservations for the banquet. Please notify me if you can't attend.

Sincerely

Jack T. Christopherson
Safety Program Manager

AVIATION SAFETY SEMINAR

Sponsored by the SCOTTSDALE FSDO

SPEAKER . . .
FRED CONE, Professor
Embry Riddle University
(Aircraft Crash Survivor)
"Today is the BEST DAY of the rest of your life"

CRASH SURVIVAL



CONTACT . . . .

Jack Christopherson
Phoenix FSDO
602/640-2239

Art Rodriquez
602/343-5628 (Pager)

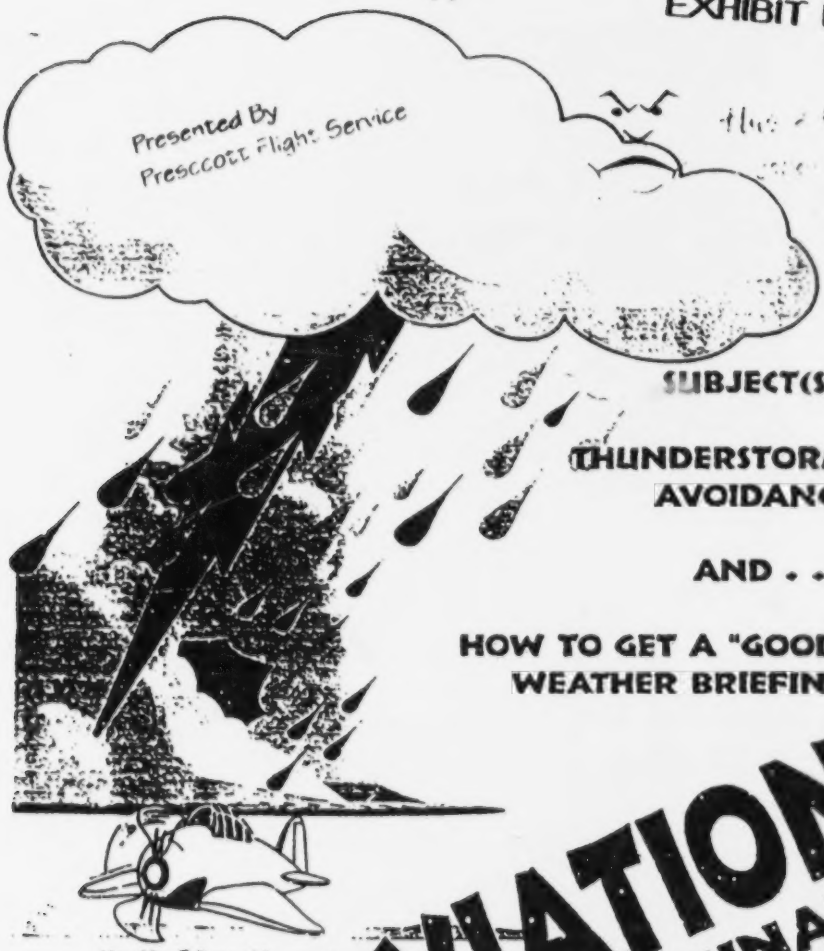
Mike Taylor
602/344-9352

YUMA HIGH SCHOOL
JANUARY 11, 1995
7:30PM

app 4 EXHIBIT A

app 4

EXHIBIT B



SUBJECT(S):

THUNDERSTORM AVOIDANCE

AND . . .

HOW TO GET A "GOOD" WEATHER BRIEFING

AVIATION SAFETY SEMINAR

APRIL 26, 1995
YUMA HIGH SCHOOL
7:30PM

CONTACT

ART RODRIGUEZ
344-9063
MIKE TAYLOR
344-9352

U.S. Department of Transportation
Federal Aviation Administration

January 25, 1995

MICHAEL J. TAYLOR
6607 TELEGRAPH STREET
YUMA, AZ 85365

Dear Mr. TAYLOR:

Based on the computerized review of your FAA Form 3330-47-31, Aviation Safety Inspector Basic Qualifications Form, we have assigned you the tentative rating of **ELIGIBLE** for the **GENERAL AVIATION OPERATIONS** option.

Enclosed are the additional forms required to complete the application process. Please return FAA Form 3330-47-2 and FAA Form 3330-47-3 to our office **within 30 days** of the date on this letter. After that time, applicants must start the process over.

When you return these forms, we will determine the grade levels for which you are eligible and a numerical rating will be assigned for the various specialties applicable to this option. Return these forms to:

DOT, FAA Mike Monroney Aeronautical Center
Office of Aviation Careers, ATTN: AMV-200
P.O. Box 25082
Oklahoma City, OK 73125-4934

Thank you for your interest in employment with the Federal Aviation Administration.

Office of Aviation Careers

Enclosures

APPENDIX 5
(REFORMATTED)

Excerpt from November 1995 FAA NOPCA

THEREFORE, please take notice that, by reason of the foregoing circumstances, and pursuant to the authority vested in the Administrator of the Federal Aviation Administration by 49 U.S.C. section 44709, we propose to suspend your Flight Instructor Authorization for a period of ninety (90) days.



DeWITTE T. LAWSON, JR.
Assistant Chief Counsel

By: Original signed by
Naomi Tsuda
Attorney

Excerpt from January 1996 FAA Order of Suspension

The Administrator has determined that, by reason of the foregoing circumstances, safety in air commerce and the public interest require the suspension of the Flight Instructor Authorization of your Commercial Pilot Certificate No. 490605267 and any other airman certificate held by you.

DeWITTE T. LAWSON, JR.
Regional Counsel

By: Original signed by
Naomi Tsuda
Attorney

U.S. DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

Western Pacific Region
P.O. Box 92007
Worldway Postal Center
Los Angeles, CA 90009

November 9, 1995

Case No. 95WP070045

MICHAEL JOHN TAYLOR
6607 TELEGRAPH STREET
YUMA, AZ 85365

Dear Mr. Taylor:

Our file indicates you have not received the Notice of Proposed Certificate Action issued by this office on August 2, 1995. A copy is enclosed.

To afford you an opportunity to reply to the allegations set forth in our Notice, we will take no further action for 15 days.

Please give this matter your immediate attention.

Sincerely,

DeWITTE T. LAWSON, JR.
Assistant Chief Counsel

By: Naomi Tsuda
Attorney

DATE AUG 2 1995

RETURN TO AMP : 7.10

CASE : _____

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

TO: Michael John Taylor
1660 Edgewood St.
Yuma, Virginia 85365

334808

WE FORM 1770-25 (1-76)

NPCA
~~NPCP~~
FINAL
ORDER
CERT SURR F/U

RET CERT.
COMPLAINT
MOTION
BRIEF/PLEADINGS
U.S. ATTORNEY REF.

DEMAND PYMT
LIST WITNESS/EXHIBITS
SEPERATE PROCEDURAL SCHEDULE
MOTION TO DEEM ALLEGATIONS

OTHER _____

U.S. DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

FLIGHT STANDARDS DISTRICT OFFICE
15041 North Airport Drive
Scottsdale, AZ 85260-2408
602-640-2230 Ext. 242

March 21, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

File Number 95WP070045

Michael J. Taylor
6607 Telegraph Street
Yuma, AZ 85365

FAA states incorrect year
* year is 1995

Mr. Taylor:

On February 11, 1994, an aircraft accident occurred which involved a student pilot, Kenneth C. Batey. At the time of the accident, Mr. Batey was on a solo cross country flight.

Inspection of Mr. Batey's student pilot records indicated that you were the flight instructor who endorsed Mr. Batey for initial solo and solo cross country flights. In addition, you were the instructor who endorsed Mr. Batey's logbook for the cross country flight which ended in the accident. Mr. Batey's logbook indicated that he had not received the flight instruction required by the regulations for either initial solo or solo cross country flight.

Endorsement of a student pilot certificate and logbook when the student has not received appropriate instruction may be contrary to the Federal Aviation Regulations.

This letter is to inform you that this matter is under investigation by the Federal Aviation Administration. We would appreciate receiving any evidence or statements you would care to make regarding this matter within ten days of receipt of this letter. Any discussion or written statements furnished by you will be given consideration in our investigation. If we do not hear from you within the specified time, our report will be processed without the benefit of your statement.

Sincerely,

George F. DeMartini
Principal Operations Inspector

U.S. DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

FLIGHT STANDARDS DISTRICT OFFICE
15041 North Airport Drive
Scottsdale, AZ 85260-2408
602-640-2230 Ext. 242

April 27, 1995

File Number 95WP070046

Kenneth C. Batey
6646 Telegraph Street
Yuma, AZ 85365

Again FAA states incorrect year. * year is 1995

Mr. Batey:

On February 11, 1994, an aircraft accident occurred which you were involved as a student pilot. At the time of the accident, you were on a solo cross country flight.

Inspection of your student pilot records indicated that your student pilot certificate was endorsed for initial solo and solo cross country flights. However, your logbook indicated that you had not received the flight instruction required by the regulations for either initial solo or solo cross country flight.

Operation by a student pilot in solo flight when the student has not received appropriate instruction is to the Federal Aviation Regulations.

After considering all available information, we have concluded

that the matter does not warrant legal enforcement action. In lieu of such action, we are issuing this letter, which will be made a matter of record for a period of two years, after which, the record of this matter will be expunged.

We will expect your future compliance with the regulations.

Sincerely,

James B. Kenney
Manager

U.S. Department of Transportation
Federal Aviation Administration

800 Independence Ave., S.W.
Washington, D.C. 20591

March 23, 1999

Mr. Michael J. Taylor
6607 Telegraph Street
Yuma, Arizona 85365

Dear Mr. Taylor:

Now that the Court of Appeals for the Ninth Circuit has ruled on your request for reconsideration and entered an order that the 60-day suspension ordered by the National Transportation Safety Board (NTSB) be imposed as to your flight instructor certificate only, the Administrator has asked that I write you and attempt to respond to some of the many issues you have raised with her.

I am aware, and the Administrator is aware, that our initial pleadings were internally inconsistent, and on their face called for suspension of all of your airman certificates. Both of us regret that the error was made, and we understand your anger with regard to it. However, it was an error that was not picked up by our prosecuting attorney, by your attorney, or by the Administrative Law Judge (ALJ) who heard your case. *(Insert 1 by MT - Absolutely false.)* When we realized the error, we did the only thing we could do to make the situation right, we asked the Court of Appeals to correct the error, and it has now done so.

As to the other issues you have raised with the Administrator, let me begin by stating quite clearly that both this office and the Office of Flight Standards *(Insert 2 by MT - Who?)* have thoroughly reviewed this entire matter, and we stand by the initiation of this action and the continued prosecution of it as both proper and completely warranted by the facts. The Office of Flight Standards completely rejects your repeated suggestions that Inspector DeMartini is a liar and a crook or that he fabricated a case against you. Similarly, this office rejects the suggestion that Attorney Tsuda misrepresented the facts or intentionally mislead the court. Other than the mistakes made as to the sanction sought to be imposed, and I do not minimize or excuse that aspect of the case, our joint review of the case does not find that your charges have merit.

The heart of the case against you concerned the fact that you had not provided your student with the required training prior to allowing him to depart on a solo cross-country flight. You contested that fact at the hearing, and both you and your student offered testimony, but the ALJ made a credibility finding against you. Simply stated, the ALJ did not believe your testimony or that of the student. Similarly, you repeatedly raised the fact that your student is a former military pilot with thousands of hours of flying experience, and that the regulations provide for substituting prior military experience for required training. However, both the Federal Aviation Administration and the NTSB rejected this argument based on the facts of the case, and your attorney declined to raise the matter in his opening brief to the Court of Appeals.

Mr. Taylor, I understand, and Administrator Garvey

U.S. Department of Transportation
Federal Aviation Administration

800 Independence Ave., S.W.
Washington, D.C. 20591

April 19, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael J. Taylor
6607 Telegraph Street
Yuma, AZ 85365

Re: Claim of Michael J. Taylor

Dear Mr. Taylor:

We have completed review of the claim you filed with the Federal Aviation Administration on March 23, 1999. Our review has not disclosed facts upon which a finding of liability on the part of this agency could be based. Accordingly, we must decline to make payment on your claim.

If you are dissatisfied with this determination, you may initiate action in an appropriate United States District Court, pursuant to the provisions of the Federal Tort Claims Act, 28 USC Sections 1346(b) and 2671, et seq., not later than six months after the date of mailing this notification.

Sincerely,

James S. Dillman
Assistant Chief Counsel for Litigation

understands, that you believe you have been, and continue to be, the victim of a terrible injustice. We disagree on that point, and I think we will continue to disagree regardless of how many times you write to the Administrator and repeat your allegations against Inspector DeMartini and Attorney Tsuda. Disagreements such as this can only be resolved in the judicial process. I understand that you still have a tort of action pending in the United States District Court for the District of Arizona. If there is any merit to your allegations against Inspector DeMartini or Attorney Tsuda, it is there that you will have to prove your case. I think we both need to allow that process to run its course, and we both need to be willing to live with the results of it.

Sincerely,

Nicholas G. Garaufis
Chief Counsel

U.S. Department of Transportation
Federal Aviation Administration

800 Independence Ave., S.W.
Washington, D.C. 20591

May 14, 1998

Cathy A. Catterson, Clerk
United States Court of Appeal For the Ninth Circuit
95 Seventh Street
San Francisco, California 94103-1526

RE: Michael John Taylor v. Federal Aviation Admin.,
No. 97-70175

Dear Ms. Catterson:

On May 4, 1998, Mr. Taylor sent the Court a letter indicating that in the future he was representing himself. In the letter, he also requested a stay pending his filing petition for rehearsing.

A stay of the matter does not appear to be necessary. Under Rule 41 of the Federal Rules of Appellate Procedure the timely filing of a petition for rehearing will stay the mandate until the Court's disposition of the petition. Moreover, on January 10, 1997, the National Transportation Safety Board granted Mr. Taylor's request for a stay of NTSB Order No.

EA-4509 until the Court enters judgment on the petition. A copy of the Board's order is enclosed.

Sincerely,

Susan S. Caron
Attorney, AGC-300
Enforcement Division
(202) 267-7721

Enclosure

CC: Michael John Taylor
6607 Telegraph Street
Yuma, Arizona 85365

APPENDIX 6
(REFORMATTED)

KEN BATEY WORK EXPERIENCE
Former Navy Pilot

1969 - 1974 U.S. Navy

NAVAL AVIATOR - Fleet pilot in a light attack squadron flying the A-7E. 1100 flight hours and 185 carrier landings.

1975 - 1981 FEDERAL AVIATION ADMINISTRATION

FULL PERFORMANCE LEVEL RADAR CONTROLLER- Responsible for the safe movement and separation of all air traffic in assigned airspace, involving communications, handling, and transfer of aircraft in a major air traffic control center.

1982 -1984 MCDONNEL DOUGLAS

SENIOR TRAINING ANALYST - Prepared and conducted initial cadre training including systems and flight procedures instructions for the U.S. Marine Corps AV-8B. Conducted air-to-ground classroom and simulation training on the CF-18 aircraft for the Canadian Air Force.

1984 - ALLEN CORP. - PSI - CAE-LINK CORP. - OCI

SENIOR TRAINING ANALYST - Responsible for the development and writing of the AV-8B Night Attack and Radar Attack Syllabus, including concepts, systems

instruction and lesson guides. Authored new lessons, and developed instructions for educating the fleet annual systems changes. Also participated in the ongoing review and update of existing instructional materials. This set of lessons included a series of navigation lessons covering TACAN, pilotage, Dead Reckoning (DR), INS, and GPS.

1995 - PRESENT SCHOOL (STUDENT TEACHING), SUBSTITUTE TEACHER

SUBSTITUTE TEACHER - Certified elementary teacher working as a substitute teacher for the Yuma District One School.

Kenneth C. Batey
June 5, 1996

APPENDIX 7
(REFORMATTED)

FAA ORDER 2150.3(a) COMPLIANCE AND ENFORCEMENT excerpt:

**Numerous arrows have been placed on pages to direct attention to disregarded policy and FAA directives to FAA personnel.

1. Title
2. Who must follow this order.
3. For use in compliance and enforcement
4. Fairness. ABSOLUTELY no regard to this directive by FAA personnel.
5 2 other FAA inspectors (Clow) and (Wheaton-Smith) indicated to FAA DeMartini that no violation existed. Notified 9 months after incident?? Timely??
6. Conditions warrant no violation!
7. No administrative remedies were ever considered or made available.
8. No remedial training offered!
9. No consideration to section 205!
10. FAA did not observe strict time limitations!
11. Inconsistent handling. No use of this order and sanctions vindictively increased. Determined unfair by 9th circuit. Also I believe 9 the circuit was not aware of the flagrant disregard to this FAA order.
12. DeMartini goes on the record (NTSB) as stating I was cooperative and all the other activities demonstrate a very compliant attitude.
13. Administrative action and legal action must be made in accordance with this order. Not in this case!!
14. Mr. Taylor was indeed a first violator if in fact there was an actual violation!!

15. No progressive discipline.
16. Manager did not adequately review case.
17. Again not adequately reviewed.
18. No substitute remedies were considered.
19. Recommendation not substantiated by supervisor. In fact Wheaton-Smith letter discounted violation.
20. Same
21 ALL levels failed to comply
*37. (out of order). No attempts were made to settle case despite Mr. Taylor's Attorney request for administrative action at informal hearing.
22. Information
23-33. Demonstrate complaint attitude of Mr. Taylor (see attached exhibits A - D)
34. Sanction was vindictively changed by FAA Tsuda and DeMartini (see exhibit I & J)
35. Was change in sanction coordinated with AGC-300?
36. No use of FAA sanction guideline located in back of FAA order 2150.3 a.

**MANY WAYS TO RESOLVE ANY ISSUE THE FAA HAD WERE IGNORED NO CONSIDERATION WAS GIVEN TO ANY OF THIS MANUAL, except the part that says the inspector may be the best judge. Mr. DeMartini is an unethical and perjurious individual. These references should indicate his disregard to do anything constructive! Once again I request FAA to reconsider sanction.

APPENDIX 8
(REFORMATTED)

UNITED STATES DISTRICT
DISTRICT OF ARIZONA

MICHAEL J. TAYLOR, Plaintiff,
v.
GEORGE DeMARTINI, NAOMI TSUDA, FEDERAL AVIATION ADMINISTRATION AND NATIONAL TRANSPORTATION SAFETY BOARD, Defendants.

CIV-98-0703-PHX-RCB
ORDER

Based upon the motion of federal defendants George DeMartini and and Naomi Tsuda to substitute the United States as the federal defendant herein with respect to the plaintiff's complaint and good cause appearing therefore, it is

ORDERED that the motion of the individual defendants is granted and it is

FURTHER ORDERED that defendants DeMartini and Tsuda are hereby dismissed as party-defendants and in their place the United States of America is substituted as the federal defendant.

DATED this 9th day of October, 1998.

THE HONORABLE ROBERT C. BROOMFIELD
United States District Judge

APPENDIX 9
(REFORMATTED)

April 30, 1999

Michael J. Taylor
6607 Telegraph Street
Yuma, Arizona 85365
(520) 344-9352

Plaintiff in Pro Per

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Michael J. Taylor, Plaintiff
v.
George DeMartini, Naomi Tsuda, FAA & NTSB, Defendant

Case No. CIV98-0703PHXRCB

Hon. Robert Broomfield

MOTION TO REINSTATE DEFENDANTS AND MOTION FOR SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF

NOTE

On March 27, 1999 the Plaintiff requested the court to postpone any action pending the FTCA (Federal Tort Claim Act) response from the FAA (Federal Aviation Administration) and requested the court to reinstate

defendants for cause. Also in previous telephone conversation with Mr. Patrick, the US Attorney explained to the Plaintiff he would be filing a motion with the court and the Plaintiff would receive a copy with time to respond. The Plaintiff has not received any information from Mr. Patrick and thus concludes this motion is now appropriate.

FAA DENIES PLAINTIFF'S FTCA CLAIM

Last week the plaintiff received a letter from the Assistant Chief Counsel of Litigation for the FAA dated APR 19, 1999. This letter denied the Plaintiff's claim and explained that action must be initiated in the appropriate United States District Court if the plaintiff was dissatisfied with the FAA response.
(FAA denial letter attached as supplemental document A).

FAA ADMITS ERRORS

The FAA has clearly accepted responsibility for the inappropriate action against the Plaintiff's Airline Transport Pilot Certificate, Flight Engineer Certificate, Airframe and Powerplant Mechanics Certificate, and Commercial Pilot Certificate. The issue regarding the Plaintiff's Flight Instructor Certificate has not yet been totally resolved. The Plaintiff is constructing an appeal to the Supreme Court in hopes this body of justice will review and consider key elements on appeal.

It has taken 4 years to get the FAA to accept responsibility for errors it admits in filings with the Ninth Circuit. The FAA characterizes these mistakes as harmless and requests the Plaintiff to accept this. Mr. Taylor takes great issue with this and given the opportunity in court will expose the deceit and wrongful acts of the FAA individuals involved in this case.

Supplemental document B includes another copy of the letter from Mr. Nicholas Garaufis, FAA Chief Counsel Washington D.C. It clearly states the FAA was wrong in certain aspects but continues to make statements that are not true. Admission of the NTSB hearing record will clearly refute the statements in this letter. This letter is mentioned not only to support the Plaintiff but to show the court that the Chief Counsel of the FAA believes the issues of the plaintiff's complaint can only be resolved in the District Court of Arizona where plaintiff has filed complaint.

MOTION FOR SUMMARY JUDGMENT FOR FTCA CLAIM

The Plaintiff, Michael Taylor, respectfully requests the court to grant summary judgment to the plaintiff for costs requested in FTCA Claim presented to the FAA on March 5, 1999. (FTCA Claim presented to the FAA is supplemental document C).

REQUEST TO REINSTATE DEFENDANTS

The clear undeniable wrongful acts of the defendants can and will be demonstrated to the court if the Plaintiff is allowed to present his case. The actions of FAA individuals are clearly contrary to FAA policy and orders. The FAA Chief Counsel states the Plaintiff's allegations must be proven in District Court. The Plaintiff only asks for the opportunity.

The allegations the Plaintiff makes against the individuals in this case will be shown to be outside the scope of their jobs and in direct violation of FAA Orders and Policies. Therefore, the Plaintiff requests the court reinstate Defendants DeMartini and Tsuda so the Plaintiff can actually

prove his allegations against them and comply with the course of action detailed in the last paragraph of the FAA Chief Counsel's letter dated March 23, 1999.

Case does not support federal employees ignoring law, regulations and federal policy and procedures. (See Morton v. Ruiz 415 us 199 235 1974). Violations of this nature have occurred in this case. Several current and former FAA experts will be available to support Mr. Taylor's case in this regard as well as FAA Order 2150 3A Compliance and Enforcement Manual.

"Morton v. Ruiz establishes policies and procedural rules to be followed in enforcement actions. These policies and procedural rules confer important benefits upon individuals that are the subject of enforcement actions. **FAA EMPLOYEES ARE NOT FREE TO DISREGARD THESE POLICIES AND PROCEDURAL RULES."**

As stated in previous motion to the court, the easiest response to this case would be to ignore the government attacks and misconduct and chalk it up to experience and go on. However, that is not the right course for responsible citizens to take. Our society is based on the majority of citizens doing the right thing. Loosing one aspect of my professional career and destroying my reputation may not directly affect society but allowing individuals that betray their oath to continue above the law will affect society.

Everyone in this country has the duty to do the right things. Allowing these government individuals to explain and defend their actions is the right thing. The burden will certainly be with Mr. Taylor as it should be.

The FAA in the most recent responses to the Ninth Circuit have deceived the court and openly admits that it may

have made mistakes the FAA characterize as harmless and have engaged in abuse of power. The FAA first blames the NTSB for increasing the sanctions against Mr. Taylor them upon reviewing the evidence realizes that the FAA is actually the responsible party, actually Naomi Tsuda. There are numerous violations of policy procedures as well as actual lies, withholding of information, and obstruction of justice. Only at the request of the Ninth Circuit as the FAA been forthcoming with some of the truth. Therefore, as indicated by FAA Chief Counsel, it is only the court that can balance the power of federal law and make those entrusted with that law live up to their responsibility and oath.

Therefore, reinstating defendants, DeMartini, Tsuda, FAA, and NTSB is the right thing. Thank you for considering these two requests.

Respectfully submitted,

Michael J. Taylor, Plaintiff in Pro Per

March 5, 1999

Monetary Claim presented to the Federal Aviation Administration in regards to Decision of the Ninth Circuit Court Ruling March 1, 1999 Case #97-70175.

In compliance with FAR Part 15.3 addressed to:

Assistant Chief Counsel Litigation Division,
AGC-400,
Federal Aviation Administration,
800 Independence Avenue, SW
Washington, DC 20591

This claim is presented in compliance with FAR Part 15 - Administrative Claims Under the Federal Tort Claims Act.

In compliance with FAR Part 15 the Claimant requests compliance with the Federal Tort Claims Act.

The claimant has paid legal expenses, fees, postage and other miscellaneous costs in regards to resolving an irresponsible and vindictive enforcement action against the claimant. Although not totally resolved the claimant has prevailed in part and requests reimbursement for costs involving this case.

In January 1996 the FAA requested suspension of the Claimants:
1) Airline Transportation Pilot Certificate
2) Commercial MEL and SEL Certificates
3) Flight Engineer Turbojet Certificate
4) Airframe and Powerplant Mechanics Certificate
5) Private Pilot Certificate
6) Flight Instructor Authorization Certificate

APPENDIX 10
(REFORMATTED)

Dear Honorable Justices of the Supreme Court,

For almost 4 years the Federal Aviation Administration has held hostage the airline career of Mr. Taylor the petitioner. Almost 4 years ago the FAA requested a suspension of ALL of Mr. Taylor's airman certificates. Only in recently filed documents to the court by the FAA does the FAA admit that the sanctions against Mr. Taylor were inappropriate. Please consider the fact that the sanctions were irresponsibly increased. There must be a basis for this. Mr. Taylor contends it was increased for 4 years ago to prevent his returning to a 121 (airline) pilot position with a major airline. FAA Order 2150.3 A, Compliance & Enforcement Program spells out very clearly what action the FAA should take. It has been totally ignored.

Now after 4 years the FAA admits it was wrong (in the last filing with the court, the FAA has requested the court to change the sanction). Incidentally several months before this FAA filing with the court this same FAA attorney denied the sanctions were inappropriate and simply told Mr. Taylor there was no hope for him in affecting the outcome of this case.

The FAA would have the court believe Mr. Taylor is against all that disagree with him and attack his motives by misdirecting the court from the real issues. First of all the court must ask WHAT HAS MR. TAYLOR ACTUALLY DONE? (He asked the FAA for advise 4 years ago in regard to training a former Navy pilot. Complied with all aspects of this training, at least in the minds of Mr. Taylor, Navy pilot involved and other FAA inspectors and has documented it in the pilot logbook as "NAV".)

What has the FAA DONE? In this case the FAA has:

1) lied and distorted facts about a training flight.
2) misrepresented Federal Regulations (FAR 61.41), admitted in recent filings with the Ninth Circuit Court.
3) irresponsibly increased the sanctions against Mr. Taylor 4 years ago and recently requested those sanctions be reduced in recent FAA filing with court.
4) admits it made legal mistakes at the NTSB hearing characterizing them as harmless (blaming Mr. Taylor for an accident and then preventing an National Transportation Report describing the accident from being considered).
5) withheld information at the NTSB hearing (information given another FAA inspector. FAA referred to at NTSB hearing by FAA attorney then later the same FAA attorney denies knowledge)
6) ignored enforcement policy and procedures. The FAA is not free to ignore..

"Morton v. Ruiz 415 us 199 235 (1974), establishes policies and procedural rules to be followed in enforcement actions. These policies and procedural rules confer important benefits upon the individuals that are the subject of enforcement actions. FAA EMPLOYEES ARE NOT FREE TO DISREGARD THESE POLICIES AND PROCEDURAL RULES."

FAA Enforcement Manual, FAA Order 2150.3 A, Compliance and Enforcement Program outlines the action of inspectors. FAA DeMartini, FAA attorney Tsuda, and most recently former FAA Kathleen Yodice have clearly ignored this policy and has been supported by the full force of FAA prosecutors. Briefly and specifically, DeMartini

misrepresented FARs now clarified by FAA Attorney Caron in latest court filing as well as ignoring steps outline in FAA manual to promote compliance. FAA Tsuda served improper notice upon Mr. Taylor and vindictively and irresponsibly increased sanctions against Mr. Taylor which after 4 years the FAA has changed in latest FAA filing with the court. Attorney Tsuda also has denied information she presented at the NTSB hearing regarding information Mr. Taylor presented to another FAA inspector. Kathleen Yodice improperly placed violation on Mr. Taylor's record despite a court ordered "stay". This is only a listing of some of the improper and abusive conduct on the part of the FAA.

7) improper notice to airman referred to above (9 months after the fact, stale complaint issue as represented by Mr. Taylor's petition to the court),

And the list continues to grow.

Just recently, after learning the FAA no longer wants to suspend Mr. Taylor's "airline certificates" (ATP, FE, A&P), he continued his effort to regain a position with 121 airline only to find the FAA HAS PLACED A VIOLATION ON MR. TAYLOR'S FAA RECORD IN SPITE OF A COURT ORDERED STAY (Attached to this request is a copy of an FAA filing with the Ninth Circuit Court clearly explaining the FAA knew about the stay order.). Please understand that while the sanction was against ALL certificates there was basically no opportunity for Mr. Taylor to be considered for a 121 pilot position.

Mr. Taylor requests:

1. The court to order the FAA to remove any reference to a

a violation from Mr. Taylor's record whiles the Stay is in Effect

and/or

2. the court to place the FAA in contempt or apply some sanction to the FAA for violating a stay in order of the court. This should be done to stop the FAA from destroying individual careers and the quality of life for citizens before the court actually rules in the cases involving professional certificates.

and please consider the fact

3. Mr. Taylor pleads to the court to grant him relief from the sanctions imposed by the FAA. After speaking to the FAA Friday, February 26, 1999, Mr. Taylor was informed that when the court rules in the FAA's favor, a violation will remain on Mr. Taylor's record for an additional five years. That means 9 years of punishment for an act that was not a violation and in any other circumstances could be clarified by an agency that understood its own regulation and policies.

There has to be some end to this nightmare. If the FAA needs to demonstrate absolute authority with disregard to individual rights the court is the only defense someone like Mr. Taylor has. Please put to rest this nightmare and dismiss this case.

Respectfully Submitted,

Michael Taylor
July 27, 1999

Attachment: